



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

m/41/012

Michael O. Leavitt  
Governor

Robert L. Morgan  
Executive Director

Lowell P. Braxton  
Division Director

1594 West North Temple, Suite 1210  
PO Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5340 telephone  
(801) 359-3940 fax  
(801) 538-7223 TTY  
www.nr.utah.gov

November 12, 2002

TO: Mary Ann Wright, Acting Director *Approved 11/15/02*

THRU: Wayne Hedberg, Permit Supervisor *DWH*

FROM: Doug Jensen, Senior Reclamation Specialist *D Jensen*

RE: Request for Approval of Form and Amount of Replacement Reclamation Surety, Western Clay Company, Last Chance Mine (M/015/061) and Bentonite Pits (M/041/012), Emery and Sevier Counties, Utah

In 2001, the Division performed the standard five-year review of the reclamation sureties for Western Clay's Last Chance Mine and Bentonite Pits. Upon receipt of the requested information, the bonds were calculated and escalated five years into the future to year 2006. Western Clay provided Letters of Credit issued by Utah Independent Bank for the required amounts.

On August 16, 2002, we were informed that Western Clay was going to replace the Utah Independent Bank LOC's with LOC's issued by Zions Bank. Through subsequent correspondence, the Division authorized Utah Independent Bank to transfer the funds from the LOC's directly to Zions Bank. On September 11, 2002, we received the replacement LOC's from Zions Bank; ( ) in the amount of \$96,900 for the Bentonite Pits and ( ) in the amount of \$51,800 for the Last Chance Mine. On November 12, 2002, we received the replacement Reclamation Contracts which are tied directly to the LOC's. Because the sureties had just been escalated in 2001, the sureties were not updated again at this time, but remain at year 2006 dollars.

If you are in agreement with the acceptance of the replacement reclamation sureties please sign and date the Reclamation Contracts. We will then issue final Division approval of the replacement sureties and forward the signed and executed copies to Western Clay for their records. Thank you for your consideration of this request.

.jb

Enclosure. 2 MR-RC's & 2 LOC's

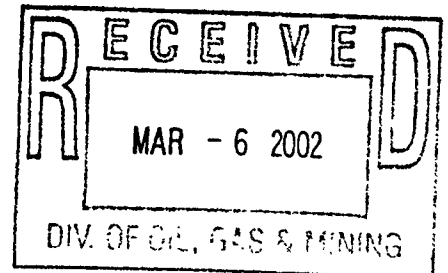
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File Number M/41/012

Effective Date March 18, 2002

Other Agency File Number ML 1937

**STATE OF UTAH**  
**DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION of OIL, GAS and MINING**  
1594 West North Temple Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801  
(801) 538-5291  
Fax: (801) 359-3940



**RECLAMATION CONTRACT**

---ooOoo---

For the purpose of this RECLAMATION CONTRACT the terms below are defined as follows:

"NOTICE OF INTENTION" (NOI): (File No.)	<u>M/041/012</u>
(Mineral Mined)	<u>Bentonite Clay</u>
"MINE LOCATION":	
(Name of Mine)	<u>Bentonite Pits</u>
(Description)	<u>1/2 mile N.W. of Redmond</u>
	<u>on Country Road-"Sheep Lane"</u>
"DISTURBED AREA":	
(Disturbed Acres)	<u>33.24</u>
(Legal Description)	<u>(refer to Attachment "A")</u>
"OPERATOR":	
(Company or Name)	<u>Western CLay Company Inc.</u>
(Address)	<u>508 E. Center</u>
	<u>PO Box 127</u>
	<u>Aurora, UT 84620</u>
(Phone)	<u>435-529-3281 FAX 529-3714</u>

"OPERATOR'S REGISTERED AGENT":

(Name)

(Address)

(Phone)

Brad Boyter

185 W. Center

PO Box 570233

Sigurd, UT 84657

435-896-1963

"OPERATOR'S OFFICER(S)":

Brad Boyter-President

Garin Madsen-Vice President

Fred Mortensen

"SURETY":

(Form of Surety - Attachment B)

Letter of Credit

"SURETY COMPANY":

(Name, Policy or Acct. No.)

Utah Independent Bank

"SURETY AMOUNT":

(Escalated Dollars)

\$96,900 (4,500 for SILTA Royalty)

"ESCALATION YEAR":

2006

"STATE":

State of Utah

"DIVISION":

Division of Oil, Gas and Mining

"BOARD":

Board of Oil, Gas and Mining

ATTACHMENTS:

A "DISTURBED AREA":

B "SURETY":

This Reclamation Contract (hereinafter referred to as "Contract") is entered into between Western Clay Company Inc. the "Operator" and the Utah State Division of Oil, Gas and Mining ("Division").

WHEREAS, Operator desires to conduct mining operations under Notice of Intention (NOI) File No. M/041/012 which has been approved by the Utah State Division of Oil, Gas and Mining under the Utah Mined Land Reclamation Act, Sections 40-8-1 et seq., Utah Code Annotated, (1953, as amended) (hereinafter referred to as "Act") and implementing rules; and

WHEREAS, Operator is obligated to reclaim that area described as the Disturbed Area as set forth and in accordance with Operator's approved Reclamation Plan, and Operator is obligated to provide surety in form and amount approved by the Division, to assure reclamation of the Disturbed Area.

NOW, THEREFORE, the Division and the Operator agree as follows:

1. Operator agrees to conduct reclamation of the Disturbed Area in accordance with the Act and implementing regulations, the original Notice of Intention dated April 15, 1983, and the original Reclamation Plan dated April 15, 1983. The Notice of Intention as amended, and the Reclamation Plan, as amended, are incorporated by this reference and made a part hereof.
2. Concurrent with the execution hereof, Operator has provided surety to assure that reclamation is conducted, in form and amount acceptable to the Division. Such surety as evidenced by the Surety Contract is in the form of the surety attached hereto as Attachment B and made a part hereof. The Surety Contract shall remain in full force and effect according to its terms unless modified by the Division in writing. If the Surety Contract expressly provides for cancellation, then, within 60 days following the Division's receipt of notice that the Surety Company intends to cancel the Surety Contract, the Operator shall provide a replacement Surety Contract in a form and amount reasonably acceptable to the Division. If the Operator fails to provide an acceptable replacement Surety Contract, the Division may order the Operator to cease further mining activities and to begin immediate reclamation of the Disturbed Area.
3. Operator agrees to pay legally determined public liability and property damage claims resulting from mining to the extent provided in Section 40-8-7(1)(e) of the Act.
4. Operator agrees to perform all duties and fulfill all reclamation requirements applicable to the mine as required by the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended.
5. The Operator's liability under this Contract shall continue in full force and effect until the Division certifies that the Operator has reclaimed the Disturbed Area in accordance with the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended.
6. If reclamation of discrete sections of the Disturbed Area is completed to the satisfaction of the Division, and the Division finds that such sections are severable from the remainder of the Disturbed Area, Operator may request the Division to certify that Operator has reclaimed such discrete sections of the Disturbed Area in accordance with the Act and Implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended. If the Division makes such certification, Operator may make request to the Division that the aggregate face amount of the Surety Contract provided pursuant to paragraph 2 be reduced to an amount necessary to provide for completion of the remaining reclamation. The Division shall hear Operator's

request for such reduction in accordance with the Board's Procedural Rules concerning requests for Agency Action.

7. Operator agrees to indemnify and hold harmless the State, Board and the Division from any claim, demand, liability, cost, charge, suit, or obligation of whatsoever nature arising from the failure of Operator or Operator's agents and employees, or contractors to comply with this Contract.
8. Operator may, at any time, submit a request to the Division to substitute surety. The Division may approve such substitution if the substitute surety meets the requirements of the Act and the implementing rules.
9. This Contract shall be governed and construed in accordance with the laws of the State of Utah.
10. If Operator shall default in the performance of its obligations hereunder, Operator agrees to pay all costs and expenses, including reasonable attorney's fees and costs incurred by the Division and/or the Board in the enforcement of this Contract.
11. Any breach that the Division finds to be material of the provisions of this Contract by Operator may, at the discretion of the Division, result in an order to cease mining operations. After opportunity for notice and hearing, the Board of Oil, Gas and Mining may enter an order to revoke the Notice of Intention, order reclamation, or order forfeiture of the Surety Contract, or take such other action as is authorized by law.
12. In the event of forfeiture of the Surety Contract, Operator shall be liable for any additional costs in excess of the surety amount which are required to comply with this Contract. Any excess monies resulting from forfeiture of the Surety Contract, upon completion of reclamation and compliance with this Contract, shall be returned to the rightful claimant.
13. This Contract including the Notice of Intention, as amended and the Reclamation Plan, as amended, represents the entire agreement of the parties involved, and any modification must be approved in writing by the parties involved.
14. Each signatory below represents that he/she is authorized to execute this Contract on behalf of the named party.

OPERATOR:

Western Clay Company, Inc.  
Operator Name

By Brad Boyter  
Authorized Officer (Typed or Printed)

President  
Authorized Officer - Position

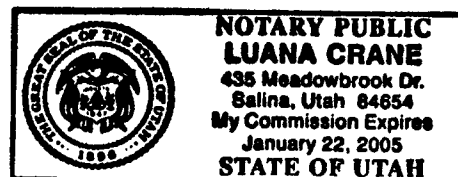
Brad Boyter  
Officer's Signature

3-4-02  
Date

STATE OF Utah )  
COUNTY OF San Juan ) ss:

On the 4th day of March, 2002, Brad Boyter  
personally appeared before me, who being by me duly sworn did say that he/she is the  
President of Western Clay Company and duly  
acknowledged that said instrument was signed on behalf of said company by authority  
of its bylaws or a resolution of its board of directors and said Brad Boyter  
duly acknowledged to me that said company executed the same.

Luana Crane  
Notary Public  
Residing at Salina



1-22-05  
My Commission Expires:

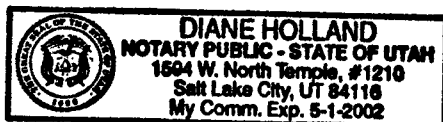
DIVISION OF OIL, GAS AND MINING:

By Lowell P Braxton  
Lowell P. Braxton, Director

3/18/02  
Date

STATE OF UTAH )  
 ) ss:  
COUNTY OF SALT LAKE )

On the 18 day of March, 2002, Lowell P. Braxton  
personally appeared before me, who being duly sworn did say that he/she, the said Lowell P. Braxton  
is the Director of the Division of Oil, Gas and  
Mining, Department of Natural Resources, State of Utah, and he/she duly acknowl-  
edged to me that he/she executed the foregoing document by authority of law on behalf  
of the State of Utah.



Diane Holland  
Notary Public  
Residing at: Salt Lake City, Utah

May 1, 2002  
My Commission Expires:

## ATTACHMENT "A"

Western Clay Company, Inc.  
Operator

Bentonite  
Mine Name

M/041/012  
Permit Number

Sevier County, Utah

### LEGAL DESCRIPTION

*Include 1/4, 1/4, 1/4 sections, townships, ranges and any other descriptions that will legally determine where disturbed lands are located. Attach a topographic map of suitable scale (max. 1 inch = 500 feet; 1 inch = 200 feet or larger scale is preferred) showing township, range and sections and a clear outline of the disturbed area boundaries tied to this Reclamation Contract and surety.*

The detailed legal description of lands to be disturbed includes portions of the following lands not to exceed 33.24 acres under the approved permit and surety, as reflected on the attached map labeled Ownership Map and dated 4-21-01:

Portions of N.E. 1/4 Sec 2 T 21 S. R1 W.  
and N.W. 1/4 Sec 2 T 21 S. R1 W.  
and S.E. 1/4 Sec 35 T 20 S. R1 W.

As Detailed on Attached surveyors map dated 4-21-01



TERREL & RHEA  
NELSON TRUSTEE  
S/N 4-8-25

S 01°14'18" E  
1329.22'

UTELITE CORP.  
S/N 4-8-1  
S 01°08'35" E  
1337.06'

N 01°02'56" W  
2689.82'

NORTH SHEEP TRAIL PIT  
8.1467 ACRES

SOUTH SHEEP TRAIL PIT  
8.5855 ACRES

WESTERN  
CLAY CO

UTELITE CORP.  
4-8-1

CORNER SECTIONS 2 & 35  
PASS CAP DATED 1915  
5205.33

DN 2  
1915

S 01°14'18" E  
1329.22'

WESTERN  
CLAY CO

WESTERN CLAY CO.  
S/N 4-8-2

UTELITE CORP.  
S/N 4-8-12

NORTHEAST CORN  
FOUND BRASS C.  
ELEV. 5140.42

Section  
2

7°41' W  
8.17'

N 01°22'14" W  
329.45'  
N 88°01'30" E  
1334.43'

KEN & KIRBY LYNN NELSON  
S/N 4-23-13

S 89°18'25" W  
2670.55'

N 88°01'30" E  
1334.73'

N 01°07'09" W  
269.72'

N 01°14'44" W  
299.59'

GARY & SUSAN CARLISLE  
S/N 4-23-14

RED PIT  
9.1011 ACRES

STATE OF UTAH

N 01°22'14" W  
1319.97'

N 01°14'44" W  
1319.98'

N 01°07'09" W  
1320.00'

NORTH SLOPE PIT  
6.4214 ACRES

N 88°01'27" E  
1331.72'

N 88°01'27" E  
1331.82'

N 01°27' E  
67.86'

N 01°23'31" W  
1319.98'

STATE OF UTAH

STATE OF UTAH

N 01°24" W  
166.87'

S 88°01'24" W  
2657.75'

S 01°07'09" E  
1320.00'

THE EA  
SET AT  
Quarter  
Corner  
Section

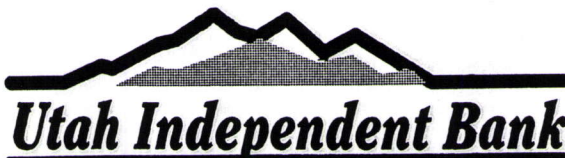
! SECTION 2

RECLAMATION CONTRACT MAP

Sevier County, Utah

Section 2, T.21S., R.1W. } SLB&M  
Section 35, T.20S., R.1W }

S 01°  
26'



P.O. Box 09 / 55 South State Salina, Utah 84654 Phone (435) 529-7459 Fax (435) 529-7884

Letter of Credit No. **25177025**

Date: October 19, 2001

**RECEIVED**

OCT 23 2001

**DIVISION OF  
OIL, GAS AND MINING**

UTAH DIVISION OF OIL, GAS AND MINING  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, UT 84114-5801

and

School and Institutional Trust Lands Administration  
675 East 500 South, Suite 500  
Salt Lake City, UT 84102

Gentlemen and Ladies:

1. Utah Independent Bank, (Surety), of Salina, Utah, hereby establishes this irrevocable letter of credit (Letter of Credit) in favor of the Utah Division of Oil, Gas and Mining (Division) for itself and as agent for the School and Institutional Trust Lands Administration (Beneficiaries) for an aggregate amount not to exceed \$67300.00, in United States dollars (Face Amount) effectively immediately.

2. This Letter of Credit will expire upon the first event set forth as follows: (a) 5:00 o'clock p.m. (Salt Lake City time), on October 20, 2002 or (b) the date upon which sufficient documents are executed by the Division to release Western Clay Company, Inc. (Operator) from further liability for reclamation of the Bentonite Pits, M/041/012 with notice to Bank or Surety by the Division accompanied by the original Letter of Credit with directions for cancellation.

3. This Letter of Credit will be automatically extended for successive periods of one year from the current or any future expiration date unless the Surety gives notice to the Division 90 days prior to the expiration date that the Surety elects not to renew the Letter of Credit.

4. Funds under the Letter of Credit are available against the Division's sight draft, in the form on Exhibit A, specifying Letter of credit No \_\_\_\_\_ delivered to the office of the Surety, 55 South State Street, Salina, Utah 84654. At the Division's sole election, the Division may present sight drafts for less than the Face Amount so long as the aggregate amount of all sight drafts does not exceed the Face Amount. Each draft must be accompanied by a certificate in the form of Exhibit B, signed by a duly authorized representative of the Division.

5. If the Surety receives the Division's sight draft(s) and certificate(s) as provided in Paragraph No. 4 above on or before the expiration or termination of this Letter of Credit, the Surety will make such amount as the Division may specify, within the limits of the second sentence of Paragraph No. 4 of this Letter of Credit, available to the Division no later than the close of business, Salt Lake City time, on the second business day following the Surety's receipt of the sight draft and certificate and in such a manner as the Division may specify.

6. The Surety will give prompt notice to the Operator and to the Division Director of any notice received or action filed alleging the insolvency or bankruptcy of the Surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the Surety's charter or license to do business.

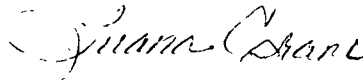
7. The Letter of Credit will be governed by the laws of the State of Utah and shall be subject to the Uniform Customs and Practice for Documentary Credit, 1993 revision, International Chamber of Commerce Publication No. 500, as the same may be amended and in effect from time to time (UCP). In the event of a conflict between Utah law and the UCP, Utah law shall govern.

8. All communications regarding this Letter of Credit will be addresses to the Surety 55 South State Street, P. O. Box 9, Salina, Utah 84654, referencing Letter of Credit No.

Very truly yours,

Utah Independent Bank  
Surety

By: Luana Crane

A handwritten signature in cursive script, appearing to read "Luana Crane", is written over a horizontal line.

Title: Loan Officer



P.O. Box 09 / 55 South State Salina, Utah 84654 Phone (435) 529-7459 Fax (435) 529-7884

**EXHIBIT A - SIGHT DRAFT**  
to  
**Letter of Credit Number.**

\_\_\_\_\_  
**Date**                      **City, County**                      **Letter of Credit No.**

\_\_\_\_\_  
**PAY TO THE ORDER OF:**                      **UTAH DIVISION OF OIL, GAS AND MINING**  
\_\_\_\_\_  
**DOLLARS**

**TO:**    **Utah Independent Bank**  
         **55 South State Street**  
         **P. O. Box 9**  
         **Salina, UT 84654**

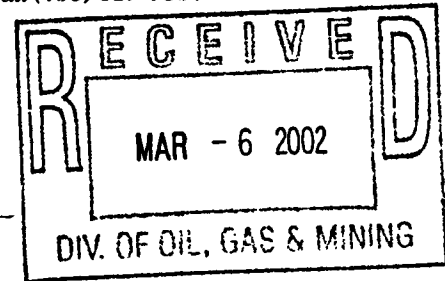
**Utah Division of Oil, Gas and Mining**  
**1594 West North Temple, Suite 1210**  
**Box 145801**  
**Salt Lake City, UT 84114-5801**

**By:** \_\_\_\_\_  
         **Authorized Signature**



P.O. Box 09 / 55 South State Salina, Utah 84654 Phone (435) 529-7459 Fax (435) 529-7884

September 12, 2002



**Irrevocable Letter of Credit number \_\_\_\_\_  
AMENDMENT**

State of Utah  
Department of Natural Resources  
Division of Oil, Gas and Mining  
1594 West North Temple, Suite 1210  
P. O. Box 145801  
Salt Lake City, UT 84114-5801

School and Institutional Trust Lands  
Administration  
675 East 500 North, Suite 500  
Salt Lake City, UT 84102

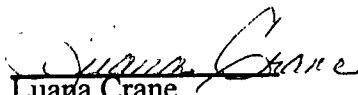
RE: Letter of Credit dated October 19, 2001  
Mine: Bentonite Pits, M/041/012  
Amount: \$67300.00

Utah Independent Bank has received a request from **WESTERN CLAY CO., INC., P. O. BOX 127, AURORA, UTAH 84620** to amend the above referenced Irrevocable Letter of Credit number \_\_\_\_\_, issued in your favor as follows:

1. Letter of Credit number \_\_\_\_\_, will change to as follows:
2. The principal amount of the above mentioned Irrevocable Letter of Credit will be increased to **\$96900.00**.
3. The maturity date will change to February 25, 2003.

All other conditions will remain the same.

Sincerely,

  
Luana Crane  
Loan Officer